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United States  
Circuit Court of Appeals

For the Ninth Circuit. 10

B. C. SCHRAM, as Receiver of First National  
Bank-Detroit, a National Banking Associa-  
tion,

Appellant,

vs.

BERTHA H. ROBERTSON,

Appellee.

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Transcript of Record

Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division.

FILED

AUG 12 1939

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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B. C. SCHRAM, as Receiver of First National  
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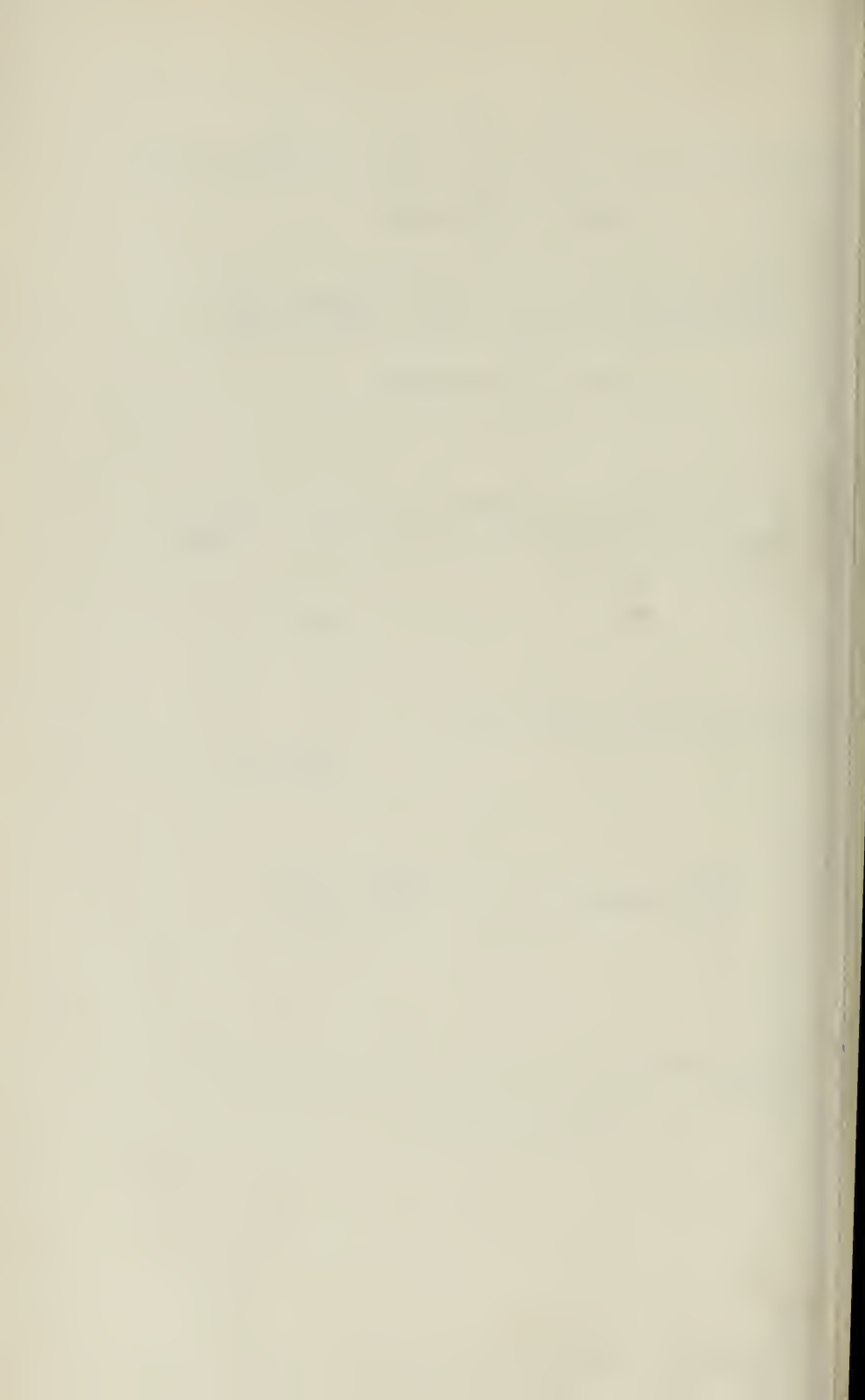
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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\*Page numbering appearing at the foot of page of original certified  
anscript of Record.

In the District Court of the United States, Southern  
District of California, Central Division.

No. 1415-Y

In Equity

B. C. SCHRAM, as Receiver of First National  
Bank-Detroit, a National Banking Associa-  
tion,

Plaintiff,

vs.

BERTHA H. ROBERTSON,

Defendant.

### BILL OF COMPLAINT

B. C. Schram, Receiver of First National Bank-Detroit, brings this, his bill of complaint, against the above named defendant, and says that:

1. The First National Bank-Detroit is a national banking association organized under the laws of the United States, commonly known as the National Bank Act, and is domiciled in the City of Detroit, Wayne County, in the State of Michigan.

2. The said First National Bank-Detroit closed its doors on February 11, 1933, at the close of business on said day, and did not thereafter resume the conduct of normal banking business; on March 13, 1933, the Comptroller of the Currency of the United States, acting under authority of the Act of Congress known as the Bank Conservation Act, having found that said First National Bank-Detroit was



unable to transact and carry on its ordinary banking [2] business, or exercise its usual banking functions without prejudice to the rights of depositors and other creditors, appointed Paul C. Keyes Conservator thereof; said Paul C. Keyes, acting under the directions of the Comptroller of the Currency, took possession of all of the books, records and assets of said bank, and continued in possession thereof until March 21, 1933, when he resigned. Thereupon, the Comptroller of the Currency appointed C. O. Thomas as Conservator, and said Thomas immediately entered upon the duties of his office, and took over from the said Keyes all of the books, records and assets of every description of said First National Bank-Detroit, and remained in exclusive possession and control thereof as such Conservator until May 11, 1933; that on the 11th day of May, 1933, the Comptroller of the Currency, having found and declared said First National Bank-Detroit to be insolvent and unable to pay its just and legal debts and obligations, appointed C. O. Thomas Receiver of said bank, pursuant to the statutes of the United States in such case made and provided. On August 15, 1934, said C. O. Thomas resigned, and on the 11th day of August, 1934, the Comptroller of the Currency of the United States appointed B. C. Schram, the plaintiff herein, Receiver of First National Bank-Detroit, effective as of August 15, 1934, to succeed said C. O. Thomas. Since that time, plaintiff has been and is now the

duly appointed, qualified and acting Receiver of First National Bank-Detroit.

3. This is a suit of a civil nature, brought by the plaintiff as Receiver of First National Bank-Detroit, and as such Receiver he is an officer of the United States, and this suit is brought in performance of his official duties in winding up the affairs of a national banking [3] association, and for the enforcement of the liability imposed by the laws of the United States.

4. The defendant, Bertha H. Robertson, is a citizen and resident of the City of Los Angeles and the State of California.

5. That the defendant, Bertha H. Robertson, was, up until about the first of January 1938, a citizen and resident of the State of Michigan; that on or about the *the* first of January 1938, she left the State of Michigan and moved to Los Angeles, California, with the intention of making her residence in that City and State.

6. That she has been a citizen and resident of the State of California only since around the first of the year 1938.

7. At the time of the failure of said First National Bank-Detroit, the defendant, Bertha H. Robertson, was the record owner of one thousand thirteen (1,013) shares of the capital stock of Detroit Bankers Company, a Michigan corporation represented by Certificates numbered 049236 for 13 shares, and Certificates numbered 20193 to 20202 inclusive, for 100 shares each.

8. The Detroit Bankers Company, whose stock was held by said defendant as aforesaid, was organized under the laws of the State of Michigan in January, 1930, with an authorized capital of Fifty Million Dollars (\$50,000,000.00), divided into two million five hundred thousand (2,500,000) shares of common stock having a par value of Twenty Dollars (\$20.00) per share, and one hundred twenty (120) shares of no par value stock, referred to in its Articles of Association as "trustee stock". [4]

9. Prior to the organization of Detroit Bankers Company, and during the summer of 1929, the stockholders of the following banks and trust company, to-wit:

First National Bank-Detroit  
a National Banking Association,  
Peoples Wayne County Bank,  
a Michigan Corporation,  
Peninsular State Bank,  
a Michigan Corporation,  
Bank of Michigan,  
a Michigan Corporation,  
Detroit & Security Trust Company,  
licensed to do a trust business  
under the laws of Michigan,

acting through a committee composed of the chief executives and large stockholders of said group, conceived a plan to pool their stockholdings in said banks, so as to bring about a merger, consolidation, or unification of said banks, and the stockholdings herein.

10. Pursuant to said plan, the stockholders of said banks and of the trust company, acting individually and also acting through their duly constituted officers, directors and agents, authorized, adopted, ratified, approved and executed a plan to accomplish their purpose, and more than ninety-seven percent (97%) of the shareholders of the above mentioned institutions individually signed, or authorized a lawfully constituted agent to sign, an agreement effectuating such plan.

11. Under said agreement and plan a committee of twelve was appointed as agent and attorney for each individual stockholder, and was specifically empowered to organize a holding corporation, namely, Detroit Bankers Company, capitalized as aforesaid, all in accordance with the provisions of said written agreement, executed by or on behalf of the stockholders. [5]

12. Said committee of twelve, representing the said stockholders, were the sole incorporators of said holding company thereafter incorporated as Detroit Bankers Company in January, 1930, and the members of the said committee were the sole subscribers to all of the non par value stock of said company, known as "trustee stock," and were the sole original trustees under a Trust Agreement executed to secure the election of said committee of twelve as the sole directors of said holding company known as Detroit Bankers Company, for the ensuing five years.

13. Thereafter the members of said committee were duly elected and qualified as directors of said holding company.

14. Under said plan, whereby Detroit Bankers Company came into existence, no one could be elected a director unless he was a trustee, and no one could vote for a director except a trustee. The common stockholders had no right to vote in the election of officers, or in the management of the corporation's affairs for five years.

15. Under said plan, whereby the holding company came into being, stock was exchanged for the holding company certificates on the basis of anticipated dividends from each of the five banks in such proportion as would insure payment of 17% per annum on the par value of the common stock of Detroit Bankers Company, and under the plan, substantially all dividends received from the above mentioned five banks were disbursed as dividends to the stockholders of Detroit Bankers Company, it being provided in said plan that the overhead and operating expenses of Detroit Bankers Company would be met by assessment levied by it upon said five banks under a so-called "service contract" to be entered into with said banks.

16. All of the details of said plan were carried out and executed, as previously determined by the stockholders of said five [6] banks, and their committees, agents, and officers thereunto lawfully authorized.



17. By said plan and arrangement, it was contemplated that the holding company should, and it did become the holder of practically all of the stock of said five banks, by exchanging the stock of said Detroit Bankers Company stock for stock in said banks.

18. Said Detroit Bankers Company had no assets except the bank stocks, which were exchanged for stock of Detroit Bankers Company, and no money was ever contributed by shareholders of Detroit Bankers Company to its capital; the one hundred twenty (120) shares of "trustee stock" were paid for by the aforementioned five banks, and the money required for the payment of the fees to the State of Michigan for filing its Articles of Association, and for qualifying its shares, was contributed by said banks.

19. Under said plan, shares of stock in the several banks, although issued in the name of directors of the several banks, as so-called "directors' qualifying shares," were the property of Detroit Bankers Company.

20. The directors signed contracts, assigning the dividends from said qualifying shares to the Detroit Bankers Company, and also assigning the stock of said company, and in many instances they never had said shares of stock in their possession; though while said directors appeared as owners of said stock on the books of the several banks, they actually had no power over the same, and did not enjoy or exercise

cise any of the rights and privileges pertaining to said stock.

21. The directors of Detroit Bankers Company dictated to the unit banks and the trust company the amount of dividends which each would be required to pay, passed upon the loans that were to be made by one unit to another unit, shifted assets from one unit to another, determined the advisability of consolidations between [7] the unit banks, nominated and elected the directors, and otherwise generally controlled and dominated said unit banks and trust company.

22. During the period of its operation, said Detroit Bankers Company engineered, directed and effected a merger and consolidation of said unit banks, namely: First National Bank in Detroit, Peoples Wayne County Bank, Peninsular State Bank, and Bank of Michigan, into one national bank, called First National Bank-Detroit, and at all times thereafter, including February 11th, 1933, when said First National Bank-Detroit closed its doors, the said Detroit Bankers Company was the holder of upwards of ninety-eight percent (98%) of its capital stock, and the Board of Directors of Detroit Bankers Company, which had been enlarged, consisted of approximately sixty-nine (69) directors, all of whom, immediately prior to their election as directors of Detroit Bankers Company, were directors of First National Bank-Detroit.

23. Although said Detroit Bankers Company was organized for the alleged purpose, as set forth in

Article III of its Articles of Association, reading as follows:

“To acquire, own, hold, vote and exercise all rights of ownership of, and to sell and dispose of shares of the capital stock of banks and trust companies and all other corporations or associations engaged in purchasing, selling, on their own account or as agents of others, underwriting or dealing in corporate and other securities, or of any other corporation engaged in any business or activity incidental to or related to or of assistance in the conduct of any such business aforesaid,”

the true and actual purpose for which said Detroit Bankers Company was created was in furtherance of a scheme to enable its stockholders, through agents appointed by them, to acquire, own, hold, control and operate a group of state and national banks and trust companies, and to enjoy and retain all of the benefits of ownership of said stock in said national and state banking institutions, and [8] insure a continuation of dividends, and profits, advantages of ownership of the stocks in said bank, by centralizing under one operating agency, a large number of banks and banking functions, and also to enable said stockholders, through such agency, to extend their ownership and control over additional banks in Michigan by acquiring such additional banks, either by the exchange of holding company stock for bank stock, or by money drawn from the banks controlled by the holding company



also, to make it possible for banks so controlled to lend money on bank stocks, represented by the holding company stocks, all contrary to and in defiance of the meaning, spirit and intent of the laws of the United States and of the State of Michigan relating to the operation and supervision of banks and trust companies.

24. In order to satisfy state and federal authorities, and in order to obtain and hold public confidence, and to assure the depositors and creditors of said banks and trust companies that they were the real, true, actual and beneficial shareholders of said banks and trust companies, and that the liability imposed by the laws of the United States and of the State of Michigan upon the shareholders of national and state banks respectively, for the security and protection of the depositors and creditors thereof, still rested upon the real, true, actual and beneficial owners of said bank and trust company shares, notwithstanding the fact that said shareholders thereof went through the form of exchanging said shares for shares in said Detroit Bankers Company, the stockholders of the Detroit Bankers Company caused to be inserted in the Articles of Association of Detroit Bankers Company, as Article IX-A thereof, the following section, to-wit:

“The holder of each share of common stock of this corporation shall be individually and severally liable for such stockholders’ ratable and proportionate part (determined on the basis of their respective stockholdings of the

total issued and outstanding stock of this corporation) for any [9] statutory liability imposed upon this corporation by reason of its ownership of shares of the capital stock of any bank or trust company, and the stockholders of this company, by the acceptance of their certificates of stock in this company, severally agree that such liability may be enforced in the same manner and to the same extent as statutory liability may now or hereafter be enforceable against stockholders of banks or trust companies under the laws under which said banks or trust companies are organized to operate. A list of the stockholders of this company shall be filed with the banking commissioner and the Comptroller of the Currency whenever requested by either of those officers."

In compliance with said previously mentioned Article IX-A of the Articles of Association of Detroit Bankers Company, said company filed with the Comptroller of the Currency on the 20th day of March, 1933, a full and complete list of all of the shareholders of said company, and the names of said shareholders of Detroit Bankers Company were and are a part of the official record of the office of the Comptroller of the Currency.

25. In order to further assure the depositors and creditors of said banks and trust companies that the exchange of their stock did not affect their liability as bank stockholders, all of the stockholder

of Detroit Bankers Company, individually and/or acting through duly appointed agents, made, issued, and published statements and advertisements advising the depositing public and the depositors and creditors of said banks and trust companies that the liability imposed by the laws of the United States and State of Michigan, upon the shareholders of national and State banks respectively for the security and protection of the depositors and creditors thereof, was enforceable against said stockholders of Detroit Bankers Company, in the same manner as said liability was then or thereafter enforceable against any other stockholder of a national or State bank under the laws of the United States or State of Michigan respectively; and so that said stockholders might not be in doubt or be deceived as to the liability attached to said stock, and resting [10] upon the owners and holders thereof, there was printed upon the face of each and every one of said certificates of stock issued by the Detroit Bankers Company, including those certificates owned and held by the defendant, Bertha H. Robertson, the substance of Article IX-A of the Articles of Association of said corporation, and on the reverse side thereof, there was printed in clear, bold and prominent type the full text of said Article IX-A, excepting the last sentence thereof. The depositors and creditors of the First National Bank-Detroit became depositors and creditors thereof, or continued and remained as such depositors in reliance upon such statements and representations, and in reliance

upon Article IX-A of the Articles of Association of said Detroit Bankers Company.

26. As provided in Article IX-A of the Articles of Association of said Detroit Bankers Company, each and every one of the shareholders of said Detroit Bankers Company, by the acceptance of their certificates of stock of said Detroit Bankers Company, entered into a contract whereby they severally agreed to pay their ratable and proportionate part of any assessment levied by the Comptroller of the Currency upon the shareholders of record of the capital stock of said First National Bank-Detroit; there was a good and valid consideration therefor; all of the parties necessary to the making of said contract imposing said liability upon the stockholders of the Detroit Bankers Company, and in favor of and for the benefit of the creditors of First National Bank-Detroit were parties to said contract.

27. Beginning in January, 1930, the Detroit Bankers Company proceeded to acquire, own, hold and control unlawfully a large number of available banks and trust companies in the State of Michigan, in substantially all instances by the simple process of exchanging their [11] holding company stock for shares in such banks and trust companies.

28. By virtue of these unlawful activities, the Detroit Bankers Company acquired the substantial control and/or ownership of the following banks and other financial corporations:

Peoples Wayne County Bank  
Bank of Michigan  
Peninsular State Bank of Detroit  
First National Bank in Detroit  
Detroit Trust Company  
Peoples Wayne County Bank of Dearborn  
Peoples Wayne County Bank of Ecorse  
Grosse Pointe Savings Bank  
Peoples Wayne County Bank of Hamtramck  
Peoples Wayne County Bank of Highland Park  
Monroe State Savings Bank  
First National Bank of Pontiac  
Peoples Wayne County Bank of River Rouge  
Detroit Bankers Safe Deposit Company  
First National Company  
Assets Realization Company  
Detroit Company  
First National Company of Detroit  
Alpena Trust & Savings Bank  
Bank of Saginaw  
Central National Bank of Battle Creek  
Hackley Union Bank of Muskegon  
Peoples Commercial & Savings Bank of Bay  
City  
United States Savings Bank of Port Huron  
Old Kent Bank of Grand Rapids

29. Immediately upon the acquisition of either the substantial control and/or ownership of said state and national banks, trust companies and other financial corporations as set forth in the preceding



paragraph of this Bill of Complaint, said Detroit Bankers Company proceeded to completely and entirely dominate, supervise and control the management and operation of said state and national banks, trust companies and other financial corporations, contrary to the laws of the State of Michigan, and of the United States.

30. On or about the 10th day of May, 1933, the said Detroit Bankers Company, being then hopelessly insolvent, due to the insolvency of the First National Bank-Detroit and other banks and trust companies, whose stock it held, through its officers and directors, filed a petition in the Circuit Court for the County of Wayne, Michigan, for the voluntary dissolution of said corporation [12] pursuant to the provisions of the statutes of the State of Michigan in such case made and provided, and on said date, a decree was entered by said Court dissolving Detroit Bankers Company, and appointing one William F. Connolly Receiver of its assets.

31. The Detroit Bankers Company, as a corporation, was a mere agent, or trustee, for the real and beneficial owners of the stock in the various units, including First National Bank-Detroit, whose capital stock stood in the name of Detroit Bankers Company; the stockholders in Detroit Bankers Company are the real, true and beneficial owners of the capital stock of the various units whose capital stock is held by the Detroit Bankers Company; the stockholders of Detroit Bankers

Company, by acceptance of its stock certificates, assumed the payment of any statutory assessment levied against the stock of the unit banks.

32. By reason of the matters hereinbefore alleged, the real, true and beneficial owners of the capital stock of First National Bank-Detroit, at the time of its insolvency, were the stockholders of said Detroit Bankers Company, and the said Detroit Bankers Company was the registered owner merely as trustee, or agent, for their benefit; the stockholders of Detroit Bankers Company, by acceptance of its stock certificates, assumed the payment of any statutory assessment levied against the shareholders of First National Bank-Detroit, as on said stock certificates of Detroit Bankers Company provided, and thereby became obligated to pay to the Receiver of First National Bank-Detroit their proportionate part of any assessment levied by the Comptroller of the Currency against the shareholders of First National Bank-Detroit. They are estopped to deny their liability for payment of any assessment levied against shareholders of First National Bank-Detroit, and under the circumstances are not entitled to those immunities from liability which ordinarily accrue to corporate stockholders. [13]

33. On or about the 16th day of May, 1933, J. F. T. O'Connor, the Comptroller of the Currency of the United States, found and declared that it appeared to his satisfaction, in order to pay the

contracts, debts and engagements of First National Bank-Detroit, it was necessary to enforce the individual liability of the stockholders of said bank to the extent hereinafter mentioned, as prescribed in Sections 5151 and 5234 of the Revised Statutes of the United States, Section 1-C, 156, Act of June 30, 1876, and Section 23, Act approved December 23, 1913, known as the Federal Reserve Act. Said Comptroller of the Currency, by virtue of the authority vested in him by law, did levy and make an assessment and requisition upon the shareholders of First National Bank-Detroit for Twenty-five Million (\$25,000,000.00) Dollars to be paid by them on or before the 23rd day of June, 1933, which assessment and requisition was amended, on June 20th, 1933, to extend the time of payment to July 14th, 1933, and on July 13th, 1933, was amended to extend the time of payment from July 14th, 1933, to July 31st, 1933, and did make demand upon each and every one of them for the par value of each and every share of the capital stock of said association held or owned by them respectively, at the time of its failure; and the said Comptroller of the Currency did thereupon direct the aforementioned C. O. Thomas, Receiver, and the plaintiff, as his successor as aforesaid, to take all the necessary proceedings by suit or otherwise to enforce to that extent the individual liability of the said shareholders.

34. Acting pursuant to the authority and in obedience to the aforesaid directions of the Comptroller



of the Currency, said C. O. Thomas, as Receiver of First National Bank-Detroit, and the plaintiff, as his successor, notified all the shareholders of said bank, including Bertha H. Robertson, the defendant named herein, of the fact that the Comptroller of the Currency did levy said [14] assessment and made the same payable at the office of the Receiver of said First National Bank-Detroit on or before the 31st day of July, 1933, and likewise made demand upon said shareholders for payment of said assessment, including Bertha H. Robertson, the defendant herein, in accordance with the said orders of assessment of the Comptroller of the Currency, and in accordance with said notice.

35. In a representative or class suit brought by a large number of the stockholders of Detroit Bankers Company against the Receiver of First National Bank-Detroit and the Receiver of Detroit Bankers Company in the United States District Court for the Eastern District of Michigan, Southern Division entitled "George H. Barbour, et al, vs. C. O. Thomas, etc., et al," being cause No. 6034 in Equity, said Court found, determined, adjudged and decreed that the stockholders of Detroit Bankers Company were and are liable for the aforesaid assessment levied by the Comptroller of the Currency on the stock of First National Bank-Detroit, held by Detroit Bankers Company, as hereinabove set forth, in the proportion that their ownership of Detroit Bankers Company stock represents the ownership of stock of First National Bank-Detroit.

36. By reason of the facts and circumstances hereinbefore stated and alleged, and the provisions of the statutes of the United States, and 12 U. S. C. A. Section 64, the defendant, Bertha H. Robertson, became liable to the plaintiff herein for the payment of that portion of said assessment liability represented by the one thousand thirteen (1,013) shares of Detroit Bankers Company stock registered in her name, as aforesaid, together with interest thereon from July 31, 1933.

37. Notwithstanding her liability and duty in the premises, to pay said assessment liability to the plaintiff herein, the defendant has paid only the sum of Two Thousand Eighty-two and 65/100 (\$2,082.65) Dollars, and has failed, refused and neglected to pay [15] the balance thereof.

38. An accounting is necessary to determine the number of shares of capital stock of First National Bank-Detroit that the aforesaid one thousand thirteen (1,013) shares of Detroit Bankers Company stock represent, and to determine the proportion of the assessment levied by the Comptroller of the Currency against the shareholders of First National Bank-Detroit chargeable against Bertha H. Robertson, the defendant herein. Plaintiff alleges that said one thousand thirteen (1,013) shares of Detroit Bankers Company stock represents the ownership of 142,3850 shares of the capital stock of First National Bank-Detroit, and that the assessment levied by the Comptroller of the Currency against the shareholders of First National Bank-Detroit

amounts to the sum of \$14.055775 per share of Detroit Bankers Company stock.

39. This suit involves complicated matters and interests, and degrees of interests, and the transfer of the capital stock of a national banking association to an agent of the stockholder, resulting in a fraud upon the creditors of the said association. Plaintiff has no adequate remedy at law in the premises, and is entitled to maintain his bill in equity for the collection of the said assessment liability.

Wherefore, your plaintiff prays:

A. That this court take jurisdiction of the above matter, and that the above named defendant be required to make full, true and direct answer to all and singular the matters herein stated and charged.

B. That the court order an accounting to determine the proportionate part of said assessment chargeable to the one thousand thirteen (1,013) shares of Detroit Bankers Company stock registered in the name of the defendant, Bertha H. [16] Robertson.

C. That the court find and decree that the defendant, Bertha H. Robertson, is liable to the plaintiff for payment of the unpaid principal balance of said assessment, together with interest thereon from July 31, 1933.

D. That a writ of subpoena be issued out of and under the seal of this court directed to the defendant herein.

B. C. SCHRAM,  
Receiver of First National  
Bank-Detroit.  
JARVIS R. WILDER,  
Attorney for B. C. Schram,  
Receiver of First National  
Bank-Detroit, 354 South  
Spring St., Los Angeles, Cal.  
ROBERT S. MARX,  
Of Counsel.

State of Michigan,  
County of Wayne—ss.

On this 30th day of June, A. D., 1938, before me, a Notary Public, in and for said County, personally appeared B. C. Schram, to me personally known, who, being duly sworn, did say that he is Receiver of First National Bank-Detroit, a National Banking Association; that he has read the foregoing bill of complaint, and that the same is true, except as to those matters therein stated to be on information and belief, and as to those matters, he believes it to be true.

NATALIE CLARK,  
Notary Public, Wayne County, Michigan.

My commission expires April 21, 1939.

(Certificate of Clerk of Circuit Court of Wayne County omitted.)

[Endorsed]: Filed Jul. 7, 1938. [17]

[Title of District Court and Cause.]

ANSWER

Bertha H. Robertson, defendant herein, by E. C. Pyle, Esq., her attorney, makes and files this, her answer in this cause.

1. Admits the facts.

2. Admits that said First National Bank-Detroit closed its doors on February 11, 1933, and did not thereafter resume the conduct of normal banking business, and admits the appointment of B. C. Schram as receiver, as stated, but denies that said First National Bank-Detroit was at that time or ever has been insolvent and unable to pay its just and legal debts and obligations, but states the fact to be that said bank at all times had ample assets with which to pay all of its liabilities and, in addition thereto, return to its stockholders a substantial dividend on its stockholdings; that the plaintiff herein has already paid to all depositors 80% of the amount of their deposits in said bank and has still on hand, at the time of filing this suit, assets of the estimated value of \$93,862,000, said assets having a book value of approximately \$154,000,000, with outstanding liabilities to depositors against said assets to the amount of approximately \$68,699,000, and with other liabilities a total of approximately \$82,199,000; defendant further states that the action of the Comptroller of the Currency, in closing said bank and declaring it insolvent, was without sufficient knowledge of the facts, wholly [18] unwar-



ranted, and unlawful, and that said bank, had it been permitted to reopen and resume its normal business and normal functions, would have long since met and paid all of its liabilities in full, as well as have returned to its stockholders a substantial dividend.

3. Admits the facts as stated, except as to the liability imposed by the laws of the United States upon this defendant, and denies that there is or was any such liability.

4. Admits the facts as stated.

5. Admits the facts as stated.

6. Admits the facts as stated.

7. Admits the facts as stated and further states that said stock was issued to her in exchange for shares of capital stock of the Bank of Michigan, a Michigan corporation.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same. [19]

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

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19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, [20] therefore, denies same, and further denies that she thereby retained any true, actual, or beneficial ownership over the shares of stock of the Bank of Michigan which she had exchanged for the shares of said Detroit Bankers Company.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.



32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

33. Defendant denies that the First National Bank-Detroit, on the 16th day of May, 1933, or at any other time, did not have sufficient assets with which to pay its contracts, debts, and engagements, and states that the action of the Comptroller of the [21] Currency in levying an assessment against the stockholders was based upon an insufficient knowledge of the facts, was arbitrary, wholly unwarranted, and unnecessary, and states the fact to be that the said First National Bank-Detroit, at that time and ever since that time, has had and now has ample assets with which to pay all of its liabilities in full and still leave a substantial amount with which to pay a dividend to its stockholders; that the plaintiff has already paid and returned to depositors 80% of their deposits and that there is remaining a depositors' liability of approximately \$68,699,000, and total liabilities of approximately \$82,199,000, with assets estimated by the receiver to be of the value of \$93,862,000, with which to pay said outstanding liabilities, and that, therefore, no contribution by its stockholders was required or necessary in order to pay such obligations.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

37. Defendant denies that she ever at any time admitted the legality of said assessment liability or that she ever paid or authorized or permitted to be paid in her behalf any sum or sums whatsoever to apply as against her claimed liability and has no knowledge as to how the said sum of \$2,082.65, claimed to have been paid by her, was arrived at nor of what it is constituted. Defendant claims the facts to be that she never was, at any time, indebted in any sum or amounts whatsoever to the First National Bank-Detroit, or its receiver, but states the fact to be that on [22] February 11, 1933, she was a depositor in the Peoples Wayne County Bank, Detroit, Michigan, in its branch office at 108 John R. Street, Detroit, Michigan, and that at that time she had on deposit, in a savings account, the sum of \$2,205.41, and in a checking account the sum of \$2,492.10, a total of \$4,697.51, and that she is informed and states the fact so to be that said sums so belonging to her were appropriated, taken and kept by C. O. Thomas, Receiver of the First National Bank-Detroit; that she duly filed with said receiver evidence of her claims and that same were both admitted and allowed; that said sums and amounts so allowed were taken over, appropriated, and kept by plaintiff; that she is advised and so charges the fact to be that plaintiff has, since February 11, 1933, paid and distributed to depositors

80% of the total amount of their deposits at the time of the closing of said bank, and that this defendant has not been paid or received such dividends, and defendant, therefore, files and makes this counter-claim that she is entitled to a complete accounting by the plaintiff for said sums so on deposit and a complete statement as to the alleged payment by her of \$2,082.65 as an assessment liability. Defendant further states that even if she were liable for an assessment, as claimed, plaintiff would still be indebted to her in the large sum and amount of approximately \$2,726.40, together with interest thereon from July 31, 1933, and for such accounting and claim and payment to her she makes demand.

38. Defendant has not sufficient knowledge of the method or proceeding used by plaintiff in arriving at the claimed stock ownership in the First National Bank-Detroit of 142.3850 shares of its capital stock and as to how the claimed assessment per share of \$14.055775 per share was arrived at, and said assessment in such an amount on that number of shares levied by the Comptroller of the Currency, and requests a complete statement and accounting for such distribution of ownership and assessment so levied. Defendant [23] further states and says, as a matter of counter-claim, that if it be established that the defendant is the owner of 142.3850 shares of the capital stock of First National Bank-Detroit, and it be further established that that is the legal and correct proportion upon which she should be assessed in respect of 1013 shares of Detroit Bankers

Company stock owned by her, then the total amount of said assessment would be the sum of \$1,971.11, as stated and claimed by plaintiff in this paragraph, that, therefore, as a matter of counter-claim, defendant would be entitled to have and receive from plaintiff the amount of her deposits in said bank at the time of its closing, together with interest thereon from July 31, 1933, over and above such amount alleged due on said stock assessment.

39. Defendant admits that this suit involves complicated matters and interests and states the fact to be that at no time has plaintiff ever presented to defendant any claim for any definite sum or amount whatsoever, nor has he ever furnished her with any information whatsoever regarding her alleged assessment liability and her deposits in said bank, and defendant avers that she is entitled in this suit to a complete adjudication of all matters of difference between the parties hereto as to stock assessment liability, deposits of defendant in said bank, and all other matters of difference.

Wherefore, defendant prays:

(a) That the Court order an accounting to determine the amount of defendant's deposits in said bank at the date of said closing;

(b) That the Court order an accounting to determine the date, percentage, and amount of all dividends paid by plaintiff to depositors;

(c) That the Court order an accounting as to why said dividends so paid have not been paid to defendant;

(d) That the Court order an accounting to determine how plaintiff arrived at the number of shares of alleged stock ownership of defendant in the First National Bank-Detroit, and the amount of assessment levied thereon by the Comptroller of the [24] Currency;

(e) That if the Court find and decree that the defendant is liable to the plaintiff in any sum for an unpaid balance of said assessment that said amount be fixed and decreed and that plaintiff be thereupon required forthwith to account to and pay over to defendant any sum or sums in its hands over and above the amount so found to be due from defendant upon said assessment;

(f) That if said plaintiff is found to be indebted to defendant that this suit be dismissed, with all proper costs and expenses allowed to defendant and such other relief as defendant may in equity be entitled to receive.

Dated: August 17th, 1938.

L. B. ROBERTSON, and

E. C. PYLE,

Attorneys for Defendant,

610 South Broadway,

Los Angeles, California.

[Endorsed]: Filed Aug. 17, 1938. [25]



[Title of District Court and Cause.]

AMENDED ANSWER

Now comes the above named defendant, by her counsel, E. C. Pyle, Esq., and by leave of Court first had and obtained, files this her amended answer to the bill of complaint filed herein, by adding the following paragraphs after paragraph 39 of her original answer, re-affirming all and singular the facts set forth in her answer in paragraphs 1 to 39, inclusive, and for further answer says:

I.

That her liability, if any, as a stockholder in the First National Bank-Detroit accrued and was due and payable on May 16, 1933, under an assessment levied on the stockholders of said bank by the Comptroller of the Currency on that date.

II.

That this suit was filed against her on July 7, 1938, and that at that time no liability whatsoever existed or now exists against this defendant by reason of the fact that said action was barred by the Statute of Limitations of the State of California, as provided by Section 359 of the Code of Civil Procedure of said State of California, as more than three years had expired from the time the Comptroller made and levied such assessment, as above stated. [27]

III.

For a further plea in this behalf, said defendant says that plaintiff's cause of action, if any, had

accrued more than three years next before the commencement of this suit, and this defendant is ready to verify.

## IV.

That no responsive pleading to defendant's answer has been filed, disclosing the facts as affirmed by defendant or denying them.

Wherefore, defendant prays that the Court require the plaintiff to make a full, true, and complete accounting of the facts affirmatively pleaded by defendant in her original answer, and that said suit be dismissed as to all other claims and matters alleged in said bill of complaint, with her reasonable costs and expenses in this behalf sustained, and such other relief as defendant may in equity be entitled to receive.

Dated at Los Angeles, California, this 4th day of January, 1939.

E. C. PYLE,

Attorney for Defendant.

Order Granting Leave to Amend Answer

Good cause being shown therefor, and the Court being fully advised in the premises, on motion of E. C. Pyle, Esq., Attorney for the defendant, it is hereby ordered that the foregoing amended answer be filed herein.

Dated this 23rd day of January, 1939.

LEON R. YANKWICH,

Judge.

[Endorsed]: Filed Jan. 23, 1939. [28]

[Title of District Court and Cause.]

MOTION TO DISMISS OR FOR JUDGMENT

The defendant moves the Court as follows:

I.

To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

II.

For judgment on the pleadings.

This motion is based on the files and records in this cause, and the authorities supporting the motion.

Dated this 21st day of March, 1939.

E. C. PYLE,

Attorney for Defendant,  
610 South Broadway,  
Los Angeles, California.

To Jarvis R. Wilder, Esq.,

Robert S. Marx, of Counsel,

Attorneys for Plaintiff.

Gentlemen:

Please take notice that the undersigned will bring the above motion on for hearing before this Court at Room 5 of the United States Courts, Post Office Building, Los Angeles, California, on the 3rd day of April, 1939, at 10 o'clock, in the forenoon of that date, or as soon thereafter as counsel can be heard.

E. C. PYLE,

Attorney for Defendant



Authorities Supporting Motion

Section 359 of the Code of Civil Procedure of the State of California;

Johnson v. Green, (C. C. A. 9, 1937) 88 Fed. (2d) 638, 14 Fed. Supp. 945.

[Endorsed]: Served and Filed Mar. 21, 1939. [30]

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[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BILL

Now comes B. C. Schram, Receiver of First National Bank-Detroit, a National banking association, plaintiff herein, by his attorney, J. R. Wilder, and moves the Court for an order permitting him to file a Supplemental Bill of Complaint, in form as attached hereto, for the following reasons, to-wit:

1. Because the said plaintiff claims, among other things, that the defendant is liable to him under and by virtue of a certain contract as described and alleged in paragraphs 24, 25, 26, 31 and 32 of his Bill of Complaint.

2. Because, since the filing of said Bill of Complaint, an assignment has been delivered to the said plaintiff, B. C. Schram, Receiver of First National Bank-Detroit, of all right, title and interest of Detroit Bankers Company, a Michigan corporation, and/or its Receiver, in and to the certain contract executed by the Receiver of Detroit Bankers Com-

pany under order of the Circuit Court for Wayne County, Michigan, In Chancery.

3. Because the said assignment is germane and pertinent to the issues involved and necessary to a proper final disposition of this cause. [31]

This motion is based on the files and records in this cause, and upon the affidavit of J. R. Wilder hereto attached.

J. R. WILDER,

Attorney for Plaintiff.

Dated March 27, 1939. [32]

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION

State of California,

County of Los Angeles—ss.

J. R. Wilder, of Los Angeles, California, being first duly sworn, deposes and says that he is one of the attorneys for B. C. Schram, Receiver of First National Bank-Detroit, plaintiff herein, and is familiar with said cause.

Deponent further states that the Bill of Complaint of the plaintiff B. C. Schram, Receiver of First National Bank-Detroit, against the defendant was filed in this cause on July 7, 1938. That said Bill of Complaint alleges and charges, among other things, liability on the part of the defendant to the said plaintiff receiver under and by virtue

of a certain contract more fully set forth and alleged in paragraphs 24, 25, 26, 31 and 32 of said Bill of Complaint.

Deponent further states that on or about October 6, 1938, and subsequent to the filing of the said Bill of Complaint, an assignment of all right, title and interest of Detroit Bankers Company, a Michigan corporation, and/or its receiver, in and to the said contract was executed and delivered to the said plaintiff B. C. [33] Schram, Receiver of First National Bank-Detroit, by the receiver of said Detroit Bankers Company, under order of the Circuit Court for Wayne County, Michigan, in chancery.

Deponent further states that in his opinion the said assignment is germane and pertinent to the issues involved herein and necessary to a proper final disposition of this cause.

Further deponent sayeth not.

J. R. WILDER.

Subscribed and sworn to before me this 24th day of March, A. D. 1939.

[Seal]                      THOMAS D. MERCOLA,  
Notary Public.

My commission expires April 22, 1939. [34]

[Title of District Court and Cause.]

SUPPLEMENTAL BILL OF COMPLAINT OF  
PLAINTIFF B. C. SCHRAM, RECEIVER  
OF FIRST NATIONAL BANK-DETROIT.

Supplementing his Bill of Complaint heretofore filed in this cause, the plaintiff, B. C. Schram, Receiver of First National Bank-Detroit, a National Banking Association, says:

1. All right, title and interest of Detroit Bankers Company, a Michigan corporation, and/or its receiver, in and to the proceeds of the assessment levied against the shareholders of First National Bank-Detroit by the Comptroller of the Currency of the United States on or about May 16, 1933, and in and to the right to enforce and collect such assessment against the shareholders of said Detroit Bankers Company, including, but not by way of limitation, all right, title and interest of the said Detroit Bankers Company and/or its receiver in and to the contract created by Article IX-A of the Articles of Association of Detroit Bankers Company, endorsed on each and every certificate of said Detroit Bankers Company stock, including the 1013 shares of said stock involved in this action, have been duly and properly assigned to the said B. C. Schram, Receiver of First National Bank-Detroit, by Ernest W. Hotchkiss, Receiver of said Detroit Bankers Company, on or about October 6, 1938, pursuant to order of the Circuit Court for Wayne County, Michigan, in chancery, [35] and petition

filed therein, copies of which assignment, order and petition are attached hereto, made parts hereof and marked "Exhibits A, B & C".

Wherefore, the said plaintiff, B. C. Schram, Receiver of First National Bank-Detroit, demands:

A. Judgment against the defendant, Bertha H. Robertson, as prayed in his original Bill of Complaint.

B. Such other and further relief to which he may appear entitled in this cause.

J. R. WILDER,

Attorney for B. C. Schram,

Receiver of First National  
Bank-Detroit.

Business Address:

Wilder & Mead,

354 S. Spring St.,

Los Angeles, Calif. [36]

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"EXHIBIT A"

State of Michigan

In the Circuit Court for the County of Wayne

In Chancery

No. 244,667

In Re: Dissolution of

Detroit Bankers Company

ASSIGNMENT

For value received the undersigned as the duly appointed, qualified and acting Receiver of Detroit

Bankers Company, a Michigan corporation, hereby sells, assigns, conveys, transfers and sets over unto B. C. Schram as Receiver of First National Bank-Detroit, a national banking association, his successors and assigns, any and all right, title and interest which the undersigned and/or Detroit Bankers Company may have or claim in and to the stock assessment and/or the proceeds of the collection of the stock assessment levied by the Comptroller of the Currency of the United States on May 16, 1933, upon the shareholders of First National Bank-Detroit.

The undersigned as Receiver of Detroit Bankers Company further sells, assigns, conveys, transfers and sets over unto B. C. Schram as Receiver of First National Bank-Detroit, his successors and assigns, any and all right of the undersigned and/or Detroit Bankers Company to collect from the owners and/or holders of the capital stock of Detroit Bankers Company their ratable and proportionate part of the said assessment heretofore levied by the Comptroller of the Currency of the United States on May 16, 1933, upon the shareholders of First National Bank-Detroit.

The undersigned as Receiver of Detroit Bankers Company hereby constitutes and appoints said B. C. Schram, Receiver of First National Bank-Detroit, his true and lawful attorney, irrevocable, with full power of substitution and revocation, for and in the name, place and stead of Detroit Bankers Company and the undersigned as its Receiver, or in the name



of said B. C. Schram as Receiver of First [37] National Bank-Detroit, at his election, to demand, sue for and recover from the owners and/or holders of the capital stock of Detroit Bankers Company their ratable and proportionate part of the assessment levied by the Comptroller of the Currency of the United States on May 16, 1933, upon the shareholders of First National Bank-Detroit.

The undersigned as Receiver of Detroit Bankers Company hereby assigns and sets over unto B. C. Schram as Receiver of First National Bank-Detroit, his successors and assigns, any and all benefit and advantage accruing to Detroit Bankers Company and/or the undersigned as its Receiver in and to the collection of the aforesaid assessment against the shareholders of First National Bank-Detroit, by reason of the decrees and judgments heretofore rendered by the Circuit Court for the County of Wayne, Michigan, and the Supreme Court of the Michigan in the cause entitled "Backus v. Connolly" and numbered 216,664 on the docket of the Wayne County Circuit Court and numbered on the docket of the Supreme Court of Michigan as No. 138, calendar number 37971, the decision and opinion of the Supreme Court of Michigan being reported in 268 Mich. 495.

The undersigned as Receiver of Detroit Bankers Company for himself, his successors and assigns, and for the Detroit Bankers Company, its successors and assigns, covenants that said Detroit Bankers Company and/or the undersigned as its Receiver

will not at any time hereafter collect or attempt to collect the said stock assessment levied by the Comptroller of the Currency of the United States on May 16, 1933, upon the shareholders of First National Bank-Detroit, or any part thereof, nor revoke the power of attorney hereinbefore given, or do any act whereby the said B. C. Schram as Receiver of First National Bank-Detroit or his successors and assigns may be prevented or hindered from enforcing payment of said stock assessment from the owners and/or holders of the shares of the capital stock of Detroit Bankers Company.

The undersigned further covenants that he, his successors and assigns, will upon request of the assignee herein from time to time [38] execute and deliver such further instruments as may by said assignee be reasonably deemed proper or necessary for the more effectual vesting in said assignee of the interests hereby intended to be assigned.

It is the intention of the undersigned by these presents to release and assign unto B. C. Schram as Receiver of First National Bank-Detroit, his successors and assigns, any and all rights whatsoever which the said Detroit Bankers Company and/or the undersigned as Receiver thereof may have or assert in and to the aforesaid stock assessment levied by the Comptroller of the Currency of the United States on May 16, 1933, and/or the right to collect the same from the owners and/or holders of the capital stock of Detroit Bankers Company by vir-

tue of any statute, contract, agreement or otherwise; including, but not by way of limitation, the right to collect the aforesaid stock assessment against the shareholders of First National Bank-Detroit by reason of the contract and agreement embodied in Article IXa of the Articles of Association of Detroit Bankers Company, which contract and agreement is referred to on the face of the certificates of the capital stock of Detroit Bankers Company and which contract and agreement is printed in full on the reverse side of said certificates.

In Witness Whereof the undersigned has set his hand and seal this 6th day of October, 1938.

(sgd.) ERNEST W. HOTCHKISS,

Receiver of Detroit Bankers Co.

Witness:

JASON L. HORNGMIN,  
EVELYN G. SMITH. [39]

## “EXHIBIT B”

State of Michigan

In the Circuit Court for the County of Wayne,  
in Chancery  
No. 214667

In Re: Dissolution of  
Detroit Bankers Company

At a session of said Court held in the County Building in the City of Detroit, Michigan, on the 29th day of July, 1938.

Present: The Honorable Theodore J. Richter,  
Circuit Judge.

There having come on for hearing before me the Petition of Ernest W. Hotchkiss, Receiver of Detroit Bankers Company, for leave to enter into that certain settlement agreement with B. C. Schram, Receiver of First National Bank-Detroit, and it appearing to the Court that the terms of said settlement agreement are fair and reasonable and are for the best interests of the creditors and stockholders of the Detroit Bankers Company, and the Court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered and Adjudged:

That said Ernest W. Hotchkiss, Receiver of Detroit Bankers Company, be, and he is hereby authorized and directed to carry out the terms of said Settlement Agreement with said Receiver of the

First National Bank-Detroit, as set forth in said petition.

THEODORE J. RICHTER,  
Circuit Judge.

A true copy.

C. J. WEITZMAN,  
Deputy Clerk. [40]

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“EXHIBIT C”

State of Michigan

In the Circuit Court for the County of Wayne  
in Chancery

No. 214667

In Re: Dissolution of  
Detroit Bankers Company

PETITION RE SETTLEMENT WITH FIRST  
NATIONAL BANK-DETROIT

To the Circuit Court for the  
County of Wayne in Chancery:

Now comes Ernest W. Hotchkiss, Receiver of Detroit Bankers Company, petitioner herein, and respectfully shows unto this Honorable Court, as follows:

1. That, since about the time of the inception of the receivership, there has been pending various disputed litigation and accounts between the Receiver of Detroit Bankers Company and the First National Bank-Detroit. That over a period of

many months your petitioner through his counsel has negotiated for a settlement of the various matters in dispute between this receivership and said First National Bank-Detroit. That pursuant to such negotiations, a settlement has finally been agreed upon subject to the approval of this Court. B. C. Schram, Receiver of First National Bank-Detroit, has already secured authorization from the office of the Comptroller of the Currency to carry out the terms of such settlement as hereinafter set forth. Pursuant to said authorization, said B. C. Schram, Receiver of said First National Bank-Detroit, has filed a petition for authority to enter into such settlement and an order has been entered in the United States District Court for the Eastern District of Michigan, Southern Division, authorizing said Receiver of First National Bank-Detroit, to enter into said settlement.

2. That, by the terms of said proposed settlement, it is provided as follows: [41]

(A) That law action No. 182095 now pending in the Wayne Circuit Court, wherein William F. Connolly, Receiver of Detroit Bankers Company, is plaintiff, and First National Bank-Detroit is defendant, is to be dismissed with prejudice and without costs to either of the parties.

(B) That the Receiver of the First National Bank-Detroit is to file forthwith a motion in bankruptcy proceedings No. 15913, now pending in the United States District Court for the Eastern District of Michigan, Southern Division, wherein C. O.



Thomas, Receiver of First National Bank-Detroit, is petitioner, and the Detroit Bankers Company is defendant, seeking in the alternative either to dismiss said proceedings or to withdraw as the petitioning creditor.

(C) Upon the dismissal of said bankruptcy suit, your petitioner is to transfer and deliver unto the Receiver of First National Bank-Detroit, the shares of the capital stock of First National Bank-Detroit now held by said Detroit Bankers Company, and said Receiver of First National Bank-Detroit is to hold said shares of stock as custodian for the shareholders of Detroit Bankers Company, so that, in the event the creditors of the First National Bank-Detroit are paid in full, any surplus remaining shall thereupon be distributed to the shareholders of Detroit Bankers Company in accordance with their rights. At the same time, your petitioner is to assign to the Receiver of First National Bank-Detroit all his right to collect from the shareholders of Detroit Bankers Company any and all stock assessments levied upon the shareholders of the First National Bank-Detroit.

(D) Upon the dismissal of said bankruptcy proceedings, the said Receiver of the First National Bank-Detroit is to file a claim in the Detroit Bankers Receivership in the amount of \$4,007,-314.05, made up as follows: [42]

Principal balance at time of suspension of Bank, February 11, 1933	\$3,982,664.99
Offset of Deposit Balances of Detroit Bankers Co. as of February 11, 1933	37,801.49
	<hr/>
	3,944,863.50
Interest at 3% to May 10, 1933	37,450.55
	<hr/>
	\$3,982,314.05
Allowance in settlement and compromise for liability of Detroit Bankers Company on notes endorsed by it, in principal amount of \$29,616.34	25,000.00
	<hr/>
	\$4,007,314.05

The above balance of \$3,982,314.05 arises out of the direct liability of the Detroit Bankers Company on certain notes for money borrowed from the First National Bank-Detroit in accordance with the schedule attached hereto as "Exhibit A" and made a part hereof. The aforesaid principal amount of \$29,616.34, which is being compromised for \$25,000 arises out of endorsements of Detroit Bankers Company on the notes shown in "Exhibit B" attached hereto and made a part hereof.

Upon the filing of said claim of said First National Bank-Detroit in the amount of \$4,007,314.05, your petitioner shall accept said claim as duly and properly filed and allowed in said amount and shall

thereupon forthwith pay to said Receiver of First National Bank-Detroit, a dividend of five per cent upon such claim, said dividend of five per cent to said Receiver of First National Bank-Detroit thus to be paid amounting to \$200,365.70. At the same time, your petitioner is to set up a reserve for payment of a five per cent dividend to other general claimants whose claims have been allowed. In order to pay said dividend, and in order to meet the further terms of said settlement, your petitioner will be required to obtain a liquidating dividend from the receivership of the First Detroit Company, Incorporated, its wholly owned subsidiary, in the sum of \$225,000.00

(E) At the time of payment of said dividend to said Receiver of First National Bank-Detroit, your petitioner is likewise to pay [43] to said Receiver the sum of \$931.89, plus interest thereon at five per cent from February 16, 1933, in order to restore a distribution previously paid upon one of the bank accounts being offset, as hereinabove set forth.

At the time of distribution of said dividend to said First National Bank-Detroit, your petitioner is to agree to the distribution of the return premium on that certain bond issued by Standard Accident Insurance Company in favor of Detroit Bankers Company and certain of its units known as Security Bond No. 230967, in accordance with the proportionate share of the premium paid by each of said units. The said premium cost was \$27,061.86 and payment of it was made by the various companies as follows:

First National Bank-Detroit	\$17,101.92
Detroit Trust Company	7,546.12
First Detroit Company, Inc.	1,913.84
Detroit Bankers Company	500.00

It is proposed that the allocation of the return premium shall be in accordance with the sums contributed by each of the units and the number of days coverage which each of the units had prior to the time of their respective cancellations.

(F) At the time that said dividend is to be paid to said First National Bank-Detroit, the Receiver of First Detroit Company, Incorporated, is to pay to the Receiver of First National Bank-Detroit, stock assessment liability upon 728 shares of Detroit Bankers Company stock standing in the name of Warham & Company as nominee for First Detroit Company, Incorporated, in the principal amount of \$10,232.60, with interest calculated to August 1, 1938, in the amount of \$2,560.98, or a total of \$12,793.58.

(G) At the same time said Receiver of First Detroit Company, Incorporated, is to pay to said Receiver of First National Bank-Detroit, the additional sum of \$1,000 in full settlement of the assessment liability upon 37 shares of Detroit Bankers Company stock standing [44] in the name of Donald N. Sweeny, as nominee of First Detroit Company, Incorporated, and upon 250 shares standing in the name of Warham & Company, as nominee of First Detroit Company, Incorporated, but transferred

during the sixty-day period prior to the closing of the First National Bank-Detroit.

(H) At the time of payment of said dividend to First National Bank-Detroit, Receiver of First National Bank-Detroit is to permit the payees of certain outstanding checks issued by First Detroit Company in the principal amount of \$30,397.47, as described in "Exhibit C" hereof, to file proofs of claim as creditors of First National Bank-Detroit for the remaining unpaid 20% of the face amount of said checks.

(I) At the time of payment of said dividend to said First National Bank-Detroit, said Receiver of First National Bank-Detroit is to purchase from the Receiver of the First Detroit Company, Incorporated, the remaining balances due upon the original net claim of Deposit balances in the amount of \$96,175.39, belonging to said First Detroit Company, Incorporated, upon the basis of 92% of the original amount thereof as of the date of suspension, thereby paying to said receiver of the First Detroit Company, Incorporated, the sum of \$11,641.04 for the 20% balance of the net deposit still unpaid.

(J) At the time of payment of said dividend to said First National Bank-Detroit, said Receiver of the First National Bank-Detroit is to release the Assets Realization Company and the Detroit Bankers Company from any and all liability in the indebtedness of the Assets Realization Company on any and all notes now held by said Re-



ceiver of the First National Bank-Detroit and on any and all liability on stock assessment levied on 5,465 shares of the Detroit Bankers Company stock, held by the Assets Realization Company and on any and all liability of Detroit Bankers Company, as endorser of that certain promissory note in the original [45] principal amount of \$1,250,000, executed by Assets Realization Company, as maker, on January 13, 1933, payable to Detroit Bankers Company, and endorsed by the Detroit Bankers Company to Detroit Trust Company, as Trustee for the Detroit Trust Company, and First National Bank-Detroit, and in turn, transferred and endorsed by the Detroit Trust Company to said Receiver of First National Bank-Detroit.

(K) At the time of payment of said dividend to First National Bank-Detroit, your petitioner and Assets Realization Company, its wholly owned subsidiary, are to assign outright unconditionally and absolutely to the Receiver of the First National Bank-Detroit any and all title and interest in and to those certain collateral securities and so-called non-book assets described in "Exhibit D" and "Exhibit E" hereof, now held by said Receiver of First National Bank-Detroit, plus the sum of \$35,359.71 in cash held by said Receiver of First National Bank-Detroit, representing the sales of certain of said non-book assets, all of said assets having an appraised value substantially less than the indebtedness of said Assets Realization Company to said First National Bank-Detroit. At the same time



the said Receiver of First National Bank-Detroit is to redeliver to the Assets Realization Company certain securities shown in "Exhibit F" hereof.

(L) It is a part of said settlement agreement and understanding that any proceeds received by the Receiver of First National Bank-Detroit from the sale of or dividends from the following list of securities are to be treated as credits against the indebtedness of the Detroit Bankers Company to said Receiver of First National Bank-Detroit, provided, however, that future dividends payable on the claim of said First National Bank-Detroit to be filed in this receivership are to be determined upon the original amount of the claims so filed and not affected by such credits, said securities being as follows: [46]

8,806 shares of Hackley Union National Bank of Muskegon.

12,520 shares of Old Kent Bank of Grand Rapids.

1,600 shares Peoples Commonwealth and Commercial Savings Bank of Bay City.

(M) Upon payment of said dividend to First National Bank-Detroit, your petitioner is to pay the sum of \$3,638.75 to White, Bower and Prevo, for certain audits made by them for the Receiver of First National Bank-Detroit, incident to the presentation and consummation of the present settlement agreement and covering the assets and liabilities

ties of the Detroit Bankers Company, First Detroit Company, Incorporated, and the Assets Realization Company.

3. Your petitioner shows that upon payment of said sums to said First National Bank-Detroit and after reserve for a five per cent dividend to other general claimants, your petitioner believes that he will have ample reserve in cash to pay all preferred claims that may be ultimately allowed, and therefore, that the rights of preferred claims will not be prejudiced by the distribution of said five per cent dividend to the general creditors.

4. Your petitioner represents that the foregoing settlement is, in his opinion, and upon the recommendation and advice of his counsel, in the best interests of the creditors and stockholders of the Detroit Bankers Company and is fair and reasonable and warrants approval by this Honorable Court.

Wherefore, your petitioner prays that he may be authorized to carry out said settlement with said Receiver of the First National Bank-Detroit in accordance with the terms herein set forth.

(Signed) E. W. HOTCHKISS,  
Receiver, Detroit Bankers  
Company.

(Sgd.) WM. HENRY GALLAGHER,

(Sgd.) A. W. SEMPLINER,  
Attorneys for Receiver,  
Detroit, Michigan. [47]

County of Wayne—ss.

On this 29th day of July, 1938, before me, a Notary Public in and for said County, personally appeared Ernest W. Hotchkiss, Receiver of Detroit Bankers Company, petitioner herein, and being duly sworn, did say that he has read the foregoing petition by him subscribed and that the contents are true to the best of his knowledge and belief.

EVELYN A. SMITH,

Notary Public, Wayne County, Mich.

My commission expires: Mar. 17, 1940.

[Endorsed]: Motion and papers attached thereto served and filed Mar. 27, 1939. [48]

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BILL OF COMPLAINT  
OF PLAINTIFF, AND AUTHORITY.

To Defendant Above Named and to E. C. Pyle, Esq.,  
610 South Broadway, Los Angeles, California,  
Her Attorney:

Please be advised that on Monday, April 3, 1939, at the hour of 10 o'clock in the morning, or as soon hereafter as counsel may be heard, in Room 5 of the above entitled Court, Federal Building, corner of Main and Temple Streets, Los Angeles, California, the Honorable Leon R. Yankwich, Judge

Presiding, plaintiff will move the Court for leave to file his supplemental bill of complaint, a copy of which is herewith served upon you.

Said motion will be made upon plaintiff's formal written motion and the affidavit of J. R. Wilder, copies of which are herewith served upon you, and will be based upon the papers, records and files of said cause, and upon the ground that since the filing of plaintiff's original bill of complaint an assignment has been made, executed and delivered to said plaintiff of all right, title and interest of Detroit Bankers Company, which assignment is germane and pertinent to the issues involved, and that said proposed supplemental bill of complaint is necessary to a proper final disposition of the said cause.

Dated March 27, 1939.

J. R. WILDER,

Attorney for Plaintiff

Authority

Paragraphs (a) and (d) of Rule 15, Federal Rules of Civil Procedure.

[Endorsed]: Served and Filed Mar. 27, 1939. [49

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 12th day of May in the year of our Lord one thousand nine hundred and thirty-nine.

Present:

The Honorable Leon R. Yankwich, District Judge  
[Title of Cause.]

The above-entitled cause having been submitted to the Court for ruling upon the motion of defendant to dismiss the action and upon the motion of the plaintiff to file a supplemental complaint, and the Court having considered the motions, It Is By the Court Ordered that the motion to dismiss the complaint and for judgment for the defendant upon the ground that the claim is barred by limitation be, and it is granted. The motion of the plaintiff for leave to file a supplemental complaint is denied.

[50]

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In the District Court of the United States, Southern  
District of California, Central Division.

In Equity—No. 1415-Y

B. C. SCHRAM, as Receiver of First National  
Bank-Detroit, a National Banking Associa-  
tion,

Plaintiff,

vs.

BERTHA H. ROBERTSON,

Defendant.

JUDGMENT UPON SUSTAINING DEFEND-  
ANT'S MOTION TO DISMISS AND FOR  
JUDGMENT AND DENYING PLAIN-  
TIFF'S MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BILL.

The defendant having filed herein, on August 17, 1938, her answer to the Bill of Complaint herein, and having filed herein by leave of court, on January 16, 1939, her amended answer setting up the bar of the Statute of Limitations of the State of California as provided by Section 359, Code of Civil Procedure of the State of California, and having filed herein, on March 21, 1939, her motion to dismiss the action "because the complaint fails to state a claim against defendant upon which relief can be granted," and "for judgment on the pleadings," and which motion was based upon the files and records in this cause; and the plaintiff having filed herein, on April 17, 1939, his motion for leave to file a supplemental bill; and said motions having



been submitted to the Court by counsel for the plaintiff and counsel for the defendant upon briefs on May 8, 1939; and an Order having been made herein, on May 12, 1939, sustaining said motion to dismiss said complaint upon the ground that the plaintiff's claim is barred by the Statute of Limitations, and granting judgment for the defendant, and denying the plaintiff's motion for leave to file a supplemental bill;

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed, that the plaintiff's motion for leave to file a supplemental bill be and the same is hereby denied; that the bill of [51] complaint filed herein be and the same is hereby dismissed with prejudice; and that the defendant have judgment herein for her costs taxed at \$.....

Dated: May 26th, 1939.

LEON R. YANKWICH,  
Judge.

Approved as to form, as provided in Rule 8.

Dated: May ....., 1939.

.....  
Attorney for Plaintiff.

Judgment entered May 26, 1939. Docketed May 26, 1939. Book 1, Page 756.

R. S. ZIMMERMAN,  
Clerk,

By LOUIS J. SOMERS,  
Deputy.

Received copy of the within this 19th day of  
May, 1939.

J. R. WILDER,

Attorney for plaintiff.

[Endorsed]: Filed May 26, 1939. [52]

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[Title of District Court and Cause.]

NOTICE OF APPEAL.

Notice is hereby given that B. C. Schram, as Receiver of First National Bank-Detroit, a National Banking Association, plaintiff above named, hereby appeals to The United States Circuit Court of Appeals for The Ninth Circuit from that certain judgment dated and entered in the above entitled suit, numbered herein 1415-Y, on the 26th day of May, 1939, in which suit Bertha H. Robertson is defendant.

Dated June 21, 1939.

JARVIS R. WILDER,

ROBERT S. MARX,

Of Counsel

By JARVIS R. WILDER,

Copy mailed to E. C. Pyle, Attorney for deft.  
6/21/39.

E. L. S.

[Endorsed]: Filed Jun. 21, 1939. [54]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD (RULE 75(f))

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the following hereinafter enumerated parts of the record, proceedings and evidence be included in and shall constitute the record on appeal herein pursuant to Rule 75 (f) of the Rules of Civil Procedure for the District Courts of the United States.

- 1 Plaintiff's Bill of Complaint.
- 2 Defendant's Answer.
- 3 Defendant's Amended Answer.
- 4 Plaintiff's Motion for Leave to File Supplemental Bill of Complaint with Affidavit in Support Thereof and Proposed Supplemental Bill of Complaint attached to motion.
- 5 Notice of Motion for Leave to File Supplemental Bill of Complaint—and authority.
- 5½ Defendant's Motion to Dismiss.
- 6 Order Granting Defendant's Motion to Dismiss and for Judgment upon the ground claim is barred by limitation; and denying plaintiff's Motion for Leave to file Supplemental Bill of Complaint.
- 7 Judgment upon sustaining defendant's Motion to Dismiss, [55] and denying plaintiff's Motion for Leave to File Supplemental Bill.
- 8 Notice of Appeal.
- 9 This Stipulation.
- 10 Certificate of Clerk authenticating the record.

Dated this 30th day of June, 1939.

JARVIS R. WILDER,

ROBERT S. MARX,

Of Counsel.

By JARVIS R. WILDER,

Attorneys for Plaintiff and Appellant.

L. B. ROBERTSON and

E. C. PYLE,

By E. C. PYLE,

Attorneys for Defendant and Appellee.

[Endorsed]: Filed Jun. 30, 1939. [56]

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[Title of District Court and Cause.]

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 56 pages, numbered from 1 to 56, inclusive, contain full, true and correct copies of the Bill of Complaint; Answer; Amended Answer; Motion to Dismiss or for Judgment; Motion for Leave to File a Supplemental Bill of Complaint; Affidavit in Support of Motion; Supplemental Bill of Complaint; Notice of Motion for Leave to File Supplemental Bill of Complaint; Minutes of May 12, 1939; Judgment; Notice of Appeal, and Stipulation as to Record, which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$8.90, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 14th day of July, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk.

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[Endorsed]: No. 9240. United States Circuit Court of Appeals for the Ninth Circuit. B. C. Schram, as Receiver of First National Bank-Detroit, a National Banking Association, Appellant, vs. Bertha H. Robertson, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 20, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals in and for  
the Ninth Circuit.

No. 9240

B. C. SCHRAM, etc.,

Plaintiff and Appellant,

vs.

BERTHA H. ROBERTSON,

Defendant and Appellee.

DESIGNATION OF RECORD AND STIPULA-  
TION.

The appellants designate the following as those parts of the record necessary for consideration of the points upon which the appellants intend to rely in this appeal and for printing;

All those parts of the transcript and record on appeal provided in the Stipulation and Designation of Contents of the Record on Appeal filed in the District Court. (Record, page 55) [Page 61 of this Printed Record.]

Dated July 19, 1939.

JARVIS R. WILDER

ROBERT S. MARX

Of Counsel

By JARVIS R. WILDER

Attorneys for Appellant

It is hereby stipulated that those portions of the Record mentioned in the foregoing designation shall constitute the record on appeal herein.



Dated July 19, 1939.

JARVIS R. WILDER

ROBERT S. MARX

Of Counsel

By JARVIS R. WILDER

Attorneys for Appellant

L. B. ROBERTSON

E. C. PYLE

By E. C. PYLE

Attorneys for Appellee

[Endorsed]: Filed July 20, 1939. Paul P. O'Brien,  
Clerk.

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[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Appellant hereby states that he will rely on the following points on the appeal of the above entitled cause:

1. The District Court erred in sustaining defendant's motion to dismiss and for judgment. (Record page 51). [Page 58 of this Printed Record.]

2. District Court erred in denying plaintiff's motion for leave to file Supplemental Bill of Complaint. (Record page 51). [Page 58 of this Printed Record.]

Dated July 19, 1939.

JARVIS R. WILDER  
ROBERT S. MARX

Of Counsel

By JARVIS R. WILDER

Attorneys for Appellant

Received copy of the within statement of points on which appellant intends to rely on appeal this 19th day of July, 1939.

L. B. ROBERTSON

E. C. PYLE

By E. C. PYLE

Attorneys for Appellee.

[Endorsed]: Filed July 20, 1939. Paul P. O'Brien,  
Clerk.